CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 415

HEINEL MOTORS, INC., AND ELMER W. HEINEL,
Petitioners,

vs.

CHESTER BOWLES, PRICE ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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Emergency Price Control Act, Section 205 (e) (56 Stat. 23, 50 U. S. Code App. Supp. II, Sec. 901, et seq., as amended by the Stabilization Extension Act of 1944 (58 Stat. 632, 50 U. S. Code App. Supp. 925 (e), and as further amended by the Amendment of 1944, Sec. 108 (b) and (c) 2

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD DISTRICT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Heinel Motors, Inc., and Elmer W. Heinel, respectfully petition that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Third Circuit entered in this case on June 13, 1945.

A

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on June 13, 1945. The jurisdiction of this Court is

involved under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925; 28 U. S. C. A., Sec. 347(a).

B

Statement of the Matter Involved

This case comes before this Court from the Third Circuit Court of Appeals which on June 13, 1945, 149 F. 2d 815 affirmed the opinion of Kirkpatrick, J., of the United States District Court for the Eastern District of Pennsylvania, 59 F. Supp. 759 (1944).

It involves a suit by the Price Administrator for an injunction and treble damages under Section 205(e) of the Emergency Price Control Act (56 Stat. 23, 50 U. S. Code App. Supp. II, Sec. 901 et seq.) and its Amendment by the Stabilization Extension Act of 1944 (58 Stat. 632, 50 U. S. Code App. 925(e)) for alleged violation of Maximum Price Regulation No. 341, effective April 26, 1943 (8 Fed. Reg. 3970), and Revised Maximum Price Regulation No. 341 effective August 16, 1943 (8 Fed. Reg. 11176), dealing with the sale of used commercial vehicles.

The case was tried by Kirkpatrick, J., of the District Court, without a jury, who granted the injunction and awarded damages for the amount of the overcharge in an opinion cited above and set forth in the record page 181a.

The Administrator's complaint was as follows:

1. That the defendant sold used trucks in excess of the above price regulations;

2. That the defendant did not have tags attached to the trucks showing the make-up of these prices;

3. That the defendant did not furnish written guarantees.

The Administrator therefore claimed that all of the used trucks were sold on an "as is" basis. The defendant con-

tended that it sold all of the said trucks with the exception of one on a "guarantee" basis; that it tried to comply with the regulations but that lack of clerical help prevented it from so doing, and further that the prices as fixed as of April, 1943, were unreasonable and confiscatory and that the Administrator, recognizing the claim, did make a substantial increase in prices of used trucks on August 10, 1943, effective August 16, 1943.

It will be noted that all the transactions involved occurred within two months of that date.

At the trial, the Administrator offered the testimony of twelve of the purchasers. He showed that the sales orders were made out on an "as is" basis. However, a number of his witnesses admitted that they purchased these used trucks under a "guarantee" basis, and even the Administrator admitted such sales in three instances.

The Government regulations called for a thirty day or 1000 mile guarantee. Defendant offered a ninety day or 4000 mile guarantee.

The Government's witnesses, who were frank, all admitted that they did buy the used trucks on a "guarantee" basis. All of the other witnesses, under cross-examination, admitted that they saw the defendant's guarantee or that it was explained to them and all took advantage of this guarantee.

Sales No. 2, LaTore (65a); No. 9, Webster (117a); and No. 10, Western Maryland (46a) were admitted as "guarantee" sales.

For evidence admitting knowledge of defendant's guarantee in the other sales, see the following:

No. 3 Beyer ..... (26a)
No. 4 LaMonaco ..... (71a)
No. 13 Gayer ..... (77a)
No. 1 Fizell ..... (92a)

No. 5 Rauch .....(100a)
No. 7 Brandt .....(113a)
No. 8 Miller .....(116a)
No. 12 Leslie .....(125a)

The remarkable thing in this case is that of the twelve witnesses, not one made a complaint with regard to their purchases of the used trucks from the defendant. All were satisfied. All who brought their trucks back for repair under the guarantee had the work done either without charge or at the one-half price stated in the guarantee. In one instance, where the work was done outside, the defendant reimbursed the purchaser with its share of the cost thereof. The only car sold on an "as is" basis was No. 11—Aerated Products Company (117a).

In order to expedite matters at the trial, the price basis on all of these cars was agreed upon with three exceptions; one was the age of the cars in nine instances; second was the cost of fish plates in No. 10—Western Maryland; and third was whether the sales were on an "as is" or "guarantee" basis.

In its defense, the defendant showed that it advertised all of these cars in the newspapers under a guarantee basis and quoted the price therein (157a) and it was at these prices that the cars were sold to the various purchasers. Several purchasers admitted that they saw these newspaper offers. Defendant also showed that it was continuously broadcasting on the radio and at all times announced its guarantee policy (155a). A photograph of a large sign over the used car lot also gave the conditions of this guarantee (80a), i. e. 90 days or 4000 miles. All of the witnesses admitted seeing this sign or would not say they had not seen it.

To sustain the claim for an injunction, the Administrator offered the testimony of one of its investigators, Louis Slepin (142a). He testified that on April 10, 1944, he went to Heinel Motors, Inc., asked for a used truck and was shown the only one they had, at the extreme corner of the lot, which had a price on the windshield but had no ticket for the reason, as was testified by Elmer Heinel (168a) that the car was not ready for sale. Slepin admitted that the person who showed him this truck stated that "when you buy it we will give you a bill and we will guarantee it and everything else" (143a).

Defendant also contended that the Administrator could not sue for treble damages under Section 205(e) of the Emergency Price Control Act because the right lay in the purchasers. The Government contended that all these purchases were made in the course of trade or business.

At the conclusion of the trial, the Court entered judgment against the defendant, assessing damages in the amount of the overcharge determined by the Administrator and granted the injunction.

The Court then filed an opinion sustaining an order for judgment and practically found every point in favor of the Price Administrator.

Upon appeal to the Third Circuit Court, the judgment of the Court below was sustained.

C

Questions Presented

1. Cannot a trial judge exercise his equitable powers and deny damages on a suit by the Office of the Price Administrator against a used truck dealer for treble damages?

2. Was not the amount of the damages as found for the Office of the Price Administrator in this action against a

used truck dealer against the weight of the evidence, particularly as to whether the sales were made on an "as is" or "guarantee" basis?

3. Was not the finding of the trial judge as to the age of the vehicles involved against the weight of the evidence?

4. Is the sale of a used truck by an auto dealer to a merchant a sale "in the course of trade or business"?

D

Reasons Relied On for Allowance of Writ

The United States Circuit Court of Appeals for the Third Circuit in affirming the lower court has laid down the principles that:

(a) The trial court has no discretion in fixing the amount of damages under the Stabilization Act of 1944 (supra).

(b) That the sales of the used autos involved were made in the course of trade or business. Many other Federal Courts have held to the contrary and a decision by this Honorable Court will determine the question. If the said sales were not made in the course of trade or business, then the Administrator could not have instituted this suit.

(c) That the general rule of evidence was abrogated or limited by the Emergency Price Control Act, particularly with regard to whether the sales were on an "as is" or "guarantee" basis and as to proof of the ages of the respective trucks.

A supporting brief accompanies this petition.

Wherefore, your petitioners respectfully pray that a writ of certiorari issue to review the order of the United States Circuit Court for the Third Circuit, entered by

that Court in this case on June 13, 1945, and that the said order be reversed by this Honorable Court, and that your petitioners may have such other and further relief as this Honorable Court may deem proper.

Respectfully submitted,

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